

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of SBC Communications Inc. ("SBC") and AT&T Corp. ("AT&T") for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which will Occur Indirectly as a Result of AT&T's Merger with a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation.

Application 05-02-027  
(Filed February 28, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING  
DENYING MOTION TO STRIKE FILED BY  
COMMUNITY TECHNOLOGY FOUNDATION OF CALIFORNIA**

This ruling denies the Community Technology Foundation of California (CTFC) motion to strike statements in Applicants' Reply Brief. CTFC filed its motion on September 22, 2005, seeking a ruling to strike certain statements in the reply briefs of Applicants, Greenlining Institute (Greenlining), and Latino Issues Forum (LIF). CTFC claims that these parties made false statements in their briefs in asserting that CTFC is unfit to administer any community benefit funds because it operates with "extremely high overhead." CTFC argues that these statements should be stricken as they cross the line between advocacy and mischaracterization

CTFC claims that parties are wrong in asserting that over 34% of CTFC's budget is spent on "overhead," claiming that such an assertion erroneously lumps together salaries and expenses relating to CTFC's "Program Services" and

“Fundraising” with salaries and expenses relating to its general administration. CTFC argues that such salaries and expenses are considered necessary costs of delivering program services.<sup>1</sup>

Latino Issues Forum filed a response in opposition to the motion on September 23, 2005. Greenlining filed a response on September 27, 2005, and a supplemental response on October 5, 2005. Applicants filed a response to the motion on October 3, 2005, in opposition to CTFC’s motion to strike.

In their responses, LIF and Greenlining note that statements in its brief were not intended to impugn the good work of the CTFC, or to minimize its past considerable contributions to the Commission. Rather, they express their intent as ensuring that the maximum philanthropic resources are distributed to Community Based Organizations. LIF stands by the statements in its Reply Brief and those of Joint Applicants and the Greenlining as true and accurate. LIF’s Reply Brief included audited financial statements (Exhibit 149C). LIF urges the Commission to scrutinize these financial statements in deciding the motion to strike and in deciding the issue of efficient fund administration.

Applicants argue that they cited CTFC’s own, audited financial statements to rebut CTFC’s claim that it is uniquely qualified to disburse grants in an efficient manner.

If its motion to strike is not granted, CTFC asks, as an alternative, that its pleading be accepted as a surreply to the statements in the reply briefs regarding the fitness of CTFC to administer community benefit funds. Applicants oppose

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<sup>1</sup> In support of its argument concerning the classification of salaries and expenses, CTFC attached copies of Internal Revenue Service documents, together with a Declaration of Jiyun Cameron Lee.

CTFC's attempts to introduce an unauthorized surreply to support its claims. Applicants argue that the Commission can give the evidence cited in support of Applicants' argument the appropriate weight. Applicants argue that there is no basis for striking argument that is based on record evidence.

### **Discussion**

CTFC has not justified its motion to strike statements made in the briefs of Applicants, Greenlining, and LIF. CTFC expresses disagreement with the statements made in parties' briefs, and believes that they have drawn incorrect inferences. Parties present conflicting views concerning how "administrative overhead" is properly measured. Such disagreements, however, provide no basis for striking statements from briefs. Nothing in CTFC's arguments justifies striking the statements that parties have made in their briefs. The Commission will be able to weigh the merits of opposing arguments on the issue of the proper distribution and administration of philanthropic funds relating to this proceeding. Striking parties' statements is not an appropriate remedy, however, in this instance. Likewise, there is no basis to treat CTFC's pleading as "surreply." Moreover, Greenlining and LIF have explained that their statements were not intended to impugn the good work of the CTFC, or to minimize its past contributions to the Commission.

**IT IS RULED** that the motion of Community Technology Foundation of California (CTFC) to strike statements in the Reply Briefs of Applicants, Greenlining and Latino Issues Forum is hereby denied. CTFC's alternative request to treat its pleading as a "surreply" is likewise denied.

Dated October 13, 2005, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motion to Strike Filed by Community Technology Foundation of California on all parties of record in this proceeding or their attorneys of record.

Dated October 13, 2005, at San Francisco, California.

/s/ ELIZABETH LEWIS  
Elizabeth Lewis

**N O T I C E**

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